

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVE DAVIS,

Plaintiff(s),

vs.

THE LIVING TRUST OF MICHAEL J.
 FITZGERALD, et al.,

Defendant(s).

Case No. 2:12-cv-01939-JCM-NJK

ORDER DENYING MOTION TO
 DISQUALIFY
 (Docket No. 21)

Pending before the Court is Plaintiff's motion to strike filings by Mark Simons, which the Court construes as a motion to disqualify Mr. Simons as attorney for Defendant Living Trust of Michael J. Fitzgerald ("Defendant"). *See* Docket No. 21. Defendant filed a response, Docket No. 26, and Plaintiff did not file a reply. The Court finds the matter properly resolved without a hearing. Local Rule 78-2. For the reasons discussed below, the motion is **DENIED**.

Plaintiff seeks Mr. Simons' disqualification pursuant to Nevada Rules of Professional Conduct 1.7 and 1.9. *See* Mot. at 4-5.¹ Plaintiff bears the burden of establishing that he has standing to bring the motion to disqualify. *Liapis v. Dist. Ct.*, 282 P.3d 733, 737 (Nev. 2012). Because Plaintiff is not and has never been Mr. Simons' client, *see* Simons Decl. ¶ 3, he has failed to establish standing to seek disqualification. *Liapis*, 282 P.3d at 737.²

Plaintiff also appears to seek Mr. Simons' disqualification pursuant to Nevada Rule of Professional Conduct 3.7, which outlines rules where an attorney is likely to be a necessary witness.

¹ This Court looks to the rules adopted by the Supreme Court of Nevada regarding attorney practice before the Court. *See* Local Rule IA 10-7.

² The Supreme Court of Nevada has recognized some "limited circumstances" in which a non-client has standing, *see, e.g., Liapis*, 282 P.3d at 737-38, but Plaintiff fails to show that any of those exceptions applies here.

1 See Mot. at 6. This argument also fails. Among other deficiencies in the motion, Plaintiff fails to
2 identify the information he would seek from Simons that is not available from another source. See
3 *Code v. Teachers Ins. & Annuity Ass'n*, 2010 WL 2674030, *1 (D. Nev. June 30, 2010). Moreover,
4 even if Plaintiff had provided the relevant information under the Rule, the Rule does not mandate
5 complete disqualification of counsel, but instead only disqualification from appearing as trial
6 counsel. *Id.*

7 For the reasons discussed above, the pending motion is hereby **DENIED**.

8 IT IS SO ORDERED.

9 DATED: April 29, 2013

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12 NANCY J. KOPPE
13 United States Magistrate Judge
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